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OFFICE OF PETITIONS

In re	:
Masanori Sano	: DECISION REGARDING
Application No. 10/825,241	: PATENT TERM ADJUSTMENT
Filed: April 16, 2004	:
Patent No. 7,097,892	:
Issued: August 29, 2006	:

This letter is in response to the "REQUEST FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705", filed October 27, 2006. Patentee requests that the determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from sixty-five (65) days to one hundred fifty-three (153) days.

The application for patent term adjustment is **DISMISSED**.

On August 29, 2006, the above-identified application matured into U.S. Patent No. 7,097,892. The patent issued with a Patent Term Adjustment of sixty-five (65) days.

Patentee states that the patent is subject to a terminal disclaimer.

The Office determined a patent term adjustment of sixty-five (65) days based on an adjustment for PTO delay of one hundred fifty-three (153) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1), reduced by Applicants' delays of eighty-eight (88) days pursuant to 35 U.S.C. 154(b)(2)(C)(iii) and 37 C.F.R. § 1.704(c)(10). The adjustment of eighty-eight (88) days is at issue.

A review of the application file reveals that applicants filed a Information Disclosure Statement (IDS) on May 2, 2006, after they had previously filed a response on March 29, 2006. The IDS did not contain a proper 37 C.F.R. § 1.704(d) statement. The IDS contained a statement that "each item of information contained in the Information Disclosure Statement filed concurrently herewith was cited in a communication from a foreign patent office in a counterpart foreign application". § 1.704(d) states that an IDS will not be considered a failure to engage under (c)(8) if it is accompanied by a statement that "each item of information contained in the information disclosure statement was **first cited** in **any** communication from a foreign patent office in a counterpart application and that this communication was not received" more than thirty days prior to the filing of the IDS.

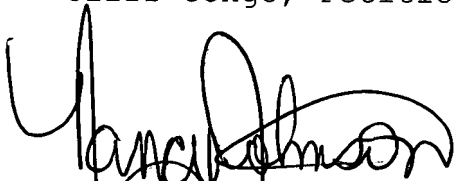
Patentee should have mirrored the language of "first cited" as required by § 1.704(d). Accordingly, applicant delay of eighty-eight (88) days was properly assessed pursuant to 37 C.F.R. § 1.704(c)(10).

In view thereof, the correct determination of patent term adjustment is **sixty-five (65) days**.

If patentee want to make an assertion that "each item" was "first cited", then patentee may file a Request for Reconsideration of this patent term adjustment decision, with a statement mirroring the language of §1.704(d). Patentee is given **thirty (30) days** to respond to this decision. No extensions of time will be granted under 37 C.F.R. § 1.136(a).

Receipt of the fee under 37 C.F.R. § 1.18(e) is acknowledged.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.



Nancy Johnson
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Office of Petitions